

Amendment and Response

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

Page 5 of 12

Remarks

The Office Action mailed 8 August 2002 has been received and reviewed. Claims 1, 14, 17, 19, and 20 were amended. Claims 1-49 are pending. Reconsideration and withdrawal of the rejections are respectfully requested.

RESTRICTION REQUIREMENT

The Examiner issued a Restriction Requirement under 35 U.S.C. 121 in the above-identified application, grouping the claims as follows: Group I, Claims 1-20, 22-25 and 40-49 drawn to pressure sensitive adhesive fibers, a nonwoven web, a stretch removable article and a medical article; Group II, Claim 21 drawn to a method for making a minimicrofibrous reinforced adhesive fiber; Group III, Claims 26-35, drawn to a substrate; and Group IV, Claims 36-39, drawn to a tape. A provisional election to prosecute claims 1-20, 22-25 and 40-49, Group I, was made in response to a telephone conversation between the Examiner and Ann M. Mueting on 17 July 2002. Applicants respectfully withdraw the provisional election and traverse the restriction of the pending claims.

There are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent . . . or distinct as claimed . . . ; and (B) There must be a serious burden on the examiner if restriction is required . . . M.P.E.P. 803. For the purpose of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in M.P.E.P. 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant.

Applicants respectfully submit that there would be no undue burden on the Examiner in examining claims 1-49 of the application. Applicants respectfully submit that claim 21, claims 26-35 and claims 36-39 all recite either a method of making, a substrate, or a tape that includes the pressure sensitive adhesive fiber identified as being part of Group I (claims 1-20, 22-25 and 40-49 drawn to pressure sensitive adhesive fibers). Applicants respectfully submit that in

Amendment and Response

Page 6 of 12

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

searching the subject matter recited in the claims of Group I (claims 1-20, 22-25 and 40-49) to pressure sensitive adhesive fiber of the present invention, the Examiner will have necessarily made a complete search of the method of making and the uses (e.g., substrates, including tape) of the pressure sensitive adhesive fiber recited in the claims of Group I. As such, there would be no undue burden on the Examiner in searching the subject matter recited in claims 1-49 of the pending application.

Applicants respectfully request reconsideration and withdrawal of the restriction requirement on claims 1-49.

Claim Objections

The Examiner objected to claim 14 as reciting an improper Markush group. Applicants have amended claim 14 to recite language of a proper Markush group.

The 35 U.S.C. §112, Second Paragraph, Rejection

The Examiner rejected claims 1-20, 22-25, and 40-49 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Specifically, the Examiner stated that the phrase "at least about" in claims 1, 3, 4, 13, 17, 19, and 20 is a relative phrase that renders the claims indefinite. Furthermore, the phrase "greater than about" in claims 5, 7, 8, 15, and 20 is a relative phrase that renders the claims indefinite. Finally, Claim 2 is rendered indefinite because of the term "substantially". Applicants respectfully traverse the rejections as follows.

Amendment and Response

Page 7 of 12

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

The M.P.E.P. clearly states that although the term "about" is flexible, the use of the term "about" has been held to be clear and definite:

The term "about" used to define the area of the lower end of a mold as between 25 to about 45% of the mold entrance was held to be clear, but flexible. *Ex parte Eastwood*, 163 USPQ 316 (Bd. App. 1968). Similarly, in *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), the court held that a limitation defining the stretch rate of a plastic as "exceeding about 10% per second" is definite because infringement could clearly be assessed through the use of a stopwatch.

M.P.E.P. §2173.05(b)(A). Thus, the courts have held that the terms "between . . . about" and "exceeding about" are clear and definite. Applicants respectfully submit that the terms "greater than about" and "at least about," for reasons similar to those recited above, are also clear and definite.

The M.P.E.P. also clearly states that, while broad, the use of the term "substantially" has been held to be clear and definite:

The term "substantially" is often used in conjunction with another term to describe a particular characteristic of the claimed invention. It is a broad term. *In re Nehrenberg*, 280 F.2d 161, 126 USPQ 383 (CCPA 1960). The court held that the limitation "to substantially increase the efficiency of the compound as a copper extractant" was definite in view of the general guidelines contained in the specification. *In re Mattison*, 509 F.2d 563, 184 USPQ 484 (CCPA 1975). The court held that the limitation "which produces substantially equal E and H plane illumination patterns" was definite because one of ordinary skill in the art would know what was meant by "substantially equal." *Andrew Corp. v. Gabriel Electronics*, 847 F.2d 819, 6 USPQ2d 2010 (Fed. Cir. 1988).

M.P.E.P. §2173.05(b)(D). Thus, the courts have held that the terms "substantially increase" and "substantially equal" are clear and definite. Applicants respectfully submit that the term "substantially continuous," for reasons similar to those recited above, is also clear and definite.

Amendment and Response

Page 8 of 12

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

Applicants respectfully request that the rejection under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

The 35 U.S.C. §102 Rejection

The Examiner rejected claims 1-20, 22-25, 40-45, and 47-49 under 35 U.S.C. §102(e) as being anticipated by Riedel et al. (U.S. Patent No. 6,133,173). Applicants have amended claims 1, 14, 17, 19, and 20 to more clearly recite the claimed subject matter. Insofar as the rejections apply to the presently pending claims, they are respectfully traversed.

With respect to claims 1-20, 22-25, 40-45, and 47-49, each of these claims recites a pressure sensitive adhesive fiber, which includes a pressure sensitive adhesive component, and a reinforcing material within the pressure sensitive adhesive component, where the pressure sensitive adhesive fiber comprises about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of the minimicrofibrous reinforcing material. There is no teaching or suggestion of Applicants' claimed invention in Riedel et al.

For example, although Riedel et al. describes a nonwoven cohesive wrap, there is no teaching in Riedel et al. that a pressure sensitive adhesive fiber comprises both about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of the minimicrofibrous reinforcing material, as recited in the pending claims.

In addition, the Examiner asserts that "[t]he microfibers of Riedel meet the applicant's definition of minimicrofibers as being microfibers made out of more than one fiber" (Office Action, pages 8-9). Applicants respectfully traverse this assertion.

Riedel et al. teaches that "the adhesive fibers are 50 microns or less in diameter . . . and preferably are greater than 10 microns in diameter" (Col. 2, lines 55-58). Riedel et al., however, fails to teach minimicrofibers, as recited in claim 1, that are defined as typically having "a diameter of no greater than about 10 micrometers" (Page 6, lines 17-18). Thus, Riedel et al. fails

Amendment and Response

Page 9 of 12

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

to both meet the Applicants' definition of minimicrofibers and to teach all the elements recited in claims 1-5 and 7-16.

Applicants respectfully request reconsideration and allowance of claims 1-20, 22-25, 40-45, and 47-49.

The 35 U.S.C. §103 Rejection

The Examiner rejected claims 1 and 46 under 35 U.S.C. §103(a) as being unpatentable over Hicks, Jr. (U.S. Patent No. 4,659,923) in view of Riedel et al. (U.S. Patent No. 6,133,173). Applicants have amended claim 1 to more clearly recite the claimed subject matter. Insofar as the rejections apply to the presently pending claims, they are respectfully traversed.

Applicants respectfully submit that the documents cited by the Examiner fail to support a proper *prima facie* case of obviousness. For example, the documents cited by Examiner fail to teach or suggest all elements recited in claims 1 and 46. As discussed above, there is no teaching or suggestion in any of the cited documents either alone or in combination, of a pressure sensitive adhesive fiber, which includes a pressure sensitive adhesive component, and a reinforcing material within the pressure sensitive adhesive component, where the pressure sensitive adhesive fiber comprises about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of the minimicrofibrous reinforcing material, as recited in claim 1.

Riedel et al. also teaches that "the adhesive fibers are 50 microns or less in diameter . . . and preferably are greater than 10 microns in diameter" (Col. 2, lines 55-58). Riedel et al., however, fails to teach or suggest minimicrofibers, as recited in claim 1, that are defined as typically having "a diameter of no greater than about 10 micrometers" (Page 6, lines 17-18). Thus, Riedel et al. fails to teach or suggest all the elements recited in claim 1.

In addition, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or

Amendment and Response

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

Page 10 of 12

motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In re Fine, 837 F. 2d 1071, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 U.S.P.Q. 2d 1941 (Fed. Cir. 1992). The prior art must suggest the desirability of the claimed invention. M.P.E.P.2143.01.

Applicants respectfully submit that the documents cited by the Examiner fail to provide some suggestion or motivation to modify the documents or to combine the documents teachings. Each claim must be considered in its entirety and when evaluating the scope of the claim, every limitation in the claim must be considered. See, e.g., In re Ochiai, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995). Considering each of the pending claims in their entirety includes, for example, a pressure sensitive adhesive fiber having about 60 weight percent to about 95 weight percent of a pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of a minimicrofibrous organic polymeric reinforcing material, where the pressure sensitive adhesive fiber can form a nonwoven web having a basis weight of about 55 g/m², a maximum load of at least about 30 g/cm, which is at least about 150% of the load at yield point, and an elongation at break of at least about 50%, as recited in claim 1.

The mere possibility that one could select components and weigh percentages from the cited documents to arrive at a pressure sensitive adhesive fiber having about 60 weight percent to about 95 weight percent of a pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of a minimicrofibrous organic polymeric reinforcing material as recited in claim 1 does not make the claimed pressure sensitive adhesive fiber that is useful in a nonwoven web having a basis weight of about 55 g/m², a maximum load of at least about 30 g/cm, which is at least about 150% of the load at yield point, and an elongation at break of at least about 50% obvious, unless the prior art suggests the desirability of such a modification. In re Gordon, 733, F.2d 900, 902, 221 USPQ 1125, 1127 (Fed. Cir. 1984)). The prior art must provide some motivation to one of ordinary skill in the art to make the claimed invention in order to support a conclusion of obviousness. See, e.g., In re Vaeck, 947 F.2d 488, at 493, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991).

Amendment and Response

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

Page 11 of 12

Riedel et al. recites a nonwoven cohesive wrap that is "formed into a roll form without the use of release liners or release coatings yet still results in a roll of coherent material such that can be easily dispensed without blocking, tearing, or cohesive failure (e.g., splitting of the fibrous web or wrap) of the wrap" (Col. 10, lines 32-37). This leads to a nonwoven cohesive wrap that "is coherent such that it can be dispensed, wound on itself and unwound or removed without the wrap tearing, splitting, or the like" (Col. 10, lines 59-61). As indicated by Riedel et al., cohesive wraps are those that stick to themselves rather than to other materials. In contrast, adhesive materials, such as those recited in claim 1 of the present invention, are those that firmly adhere to a variety of dissimilar surfaces upon mere contact without the need of more than finger or hand pressure.

The cited documents, however, fail to provide motivation as to why one of ordinary skill in the art would replace the fibers of the nonwoven cohesive wrap, having both pressure-sensitive adhesive fibers and non-pressure sensitive adhesive fibrous material commingled with the pressure-sensitive adhesive fibers, as recited in Riedel et al. with the pressure sensitive adhesive fiber, as recited in claim 1, from which a nonwoven web can be formed. There must be a suggestion or teaching in the prior art that Applicants' claimed invention could or should be prepared. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (C.A.F.C. 1991); In re O'Farrell, 853 F.2d 894, 7 U.S.P.Q.2d 1673 (C.A.F.C. 1988). It appears that it is only in hindsight, i.e., picking and choosing among the disclosures of the cited art with knowledge of Applicants' disclosure, that the Examiner can arrive at the conclusion that Applicants' invention is obvious. Therefore, there is no combination of the cited documents that are available as prior art that render Applicants' invention obvious.

Based on these remarks, the Examiner is respectfully requested to withdraw the 35 U.S.C. § 103(a) rejections of claims 1 and 46.

Amendment and Response

Page 12 of 12

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL**Summary**

It is respectfully submitted that the pending claims 1-49 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for
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By

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, Washington, D.C. 20231, on this 9th day of December, 2002, at 5:09 pm (Central Time).

By:

Name:

Gerald Ludwig
Gerald Ludwig

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GROUP 1700

APPENDIX A - SPECIFICATION/CLAIM AMENDMENTS
INCLUDING NOTATIONS TO INDICATE CHANGES MADE

Serial No.: 09/847,942

Docket No.: 56654US002

Amendments to the following are indicated by underlining what has been added and bracketing what has been deleted. Additionally, all amendments have been marked in bold typeface.

In the Claims

For convenience, all pending claims are shown below.

- 1.(AMENDED) A pressure sensitive adhesive fiber comprising:
a pressure sensitive adhesive component; and
a minimicrofibrous organic polymeric reinforcing material within the pressure sensitive adhesive component;
wherein the pressure sensitive adhesive fiber comprises about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of minimicrofibrous organic polymeric reinforcing material based on a total weight of the pressure sensitive adhesive fiber, and further wherein a nonwoven web comprising the pressure sensitive adhesive fiber and having a basis weight of about 55 g/m² has a maximum load of at least about 30 g/cm, which is at least about 150% of the load at yield point, and an elongation at break of at least about 50%.
2. The pressure sensitive adhesive fiber of claim 1 wherein the minimicrofibrous organic polymeric reinforcing material comprises substantially continuous minimicrofibers.
3. The pressure sensitive adhesive fiber of claim 1 wherein the nonwoven web comprising the pressure sensitive adhesive fiber has an elongation at break of at least about 200% at a basis weight of about 55 g/m².

Amendment and Response - - Appendix A

Page A-2

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

4. The pressure sensitive adhesive fiber of claim 1 wherein the nonwoven web comprising the pressure sensitive adhesive fiber has a maximum load of at least about 50 g/cm at a basis weight of about 55 g/m².
5. The pressure sensitive adhesive fiber of claim 1 wherein the nonwoven web comprising the pressure sensitive adhesive fiber has a load at yield point of no greater than about 100 g/cm at a basis weight of about 55 g/m².
6. The pressure sensitive adhesive fiber of claim 1 comprising about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of minimicrofibrous organic polymeric reinforcing material.
7. The pressure sensitive adhesive fiber of claim 1 wherein the minimicrofibrous organic polymeric reinforcing material comprises at least one minimicrofiber having a diameter of no greater than about 5 micrometers.
8. The pressure sensitive adhesive fiber of claim 1 wherein the minimicrofibrous organic polymeric reinforcing material comprises at least one minimicrofiber having an aspect ratio of greater than about 1000.
9. The pressure sensitive adhesive fiber of claim 1 wherein the pressure sensitive adhesive component comprises synthetic rubber, styrene block copolymer, polyvinyl ether, poly(meth)acrylate, polyolefin, silicone, or combinations thereof.
10. The pressure sensitive adhesive fiber of claim 1 wherein the pressure sensitive adhesive component comprises a crosslinked acrylate copolymer, wherein the crosslinked acrylate copolymer comprises copolymerized monomers comprising at least one monoethylenically

Amendment and Response - - Appendix A

Page A-3

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

unsaturated alkyl (meth)acrylate monomer, at least one monoethylenically unsaturated free-radically copolymerizable reinforcing monomer having a homopolymer glass transition temperature higher than that of the alkyl (meth)acrylate monomer.

11. The pressure sensitive adhesive fiber of claim 10 wherein the crosslinked acrylate copolymer is derived from a melt-processable acrylate copolymer and a crosslinking agent, wherein the crosslinking agent crosslinks subsequent to fiber formation or is a thermally reversible crosslinking agent.
12. The pressure sensitive adhesive fiber of claim 11 wherein the crosslinking agent is a styrene macromer.
13. The pressure sensitive adhesive fiber of claim 10 wherein the alkyl (meth)acrylate monomer when homopolymerized has a glass transition temperature of no greater than about 0°C, and wherein the free-radically copolymerizable reinforcing monomer when homopolymerized has a glass transition temperature of at least about 10°C.
14. (AMENDED)The pressure sensitive adhesive fiber of claim 10 wherein the pressure sensitive adhesive component comprises a polymer derived from at least one alkyl (meth)acrylate ester monomer selected from isooctyl acrylate, 2-ethyl-hexyl acrylate, and n-butyl acrylate, and at least one monomer selected from the group consisting of acrylic acid and acrylamide.
15. The pressure sensitive adhesive fiber of claim 1 wherein the minimicrofibrous organic polymeric reinforcing material comprises an elastomer having a yield strength of no greater than about 20 MPa and a tensile strength of at least about 150% of the yield strength.

Amendment and Response -- Appendix A

Page A-4

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

16. The pressure sensitive adhesive fiber of claim 1 wherein the minimicrofibrous organic polymeric reinforcing material comprises a semi-crystalline polymer.

17.(AMENDED) A pressure sensitive adhesive fiber comprising:

a pressure sensitive adhesive component; and

a reinforcing material comprising a metallocene-catalyzed polyolefin within the pressure sensitive adhesive component;

wherein the pressure sensitive adhesive fiber comprises about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of the reinforcing material based on a total weight of the pressure sensitive adhesive fiber, and further wherein a nonwoven web comprising the pressure sensitive adhesive fiber and having a basis weight of about 55 g/m² has a maximum load of at least about 30 g/cm, which is at least about 150% of the load at yield point, and an elongation at break of at least about 50%.

18. The pressure sensitive adhesive fiber of claim 17 wherein the reinforcing material is in the form of one or more fibers or one or more layers.

19.(AMENDED) A pressure sensitive adhesive fiber comprising:

a pressure sensitive adhesive component comprising a crosslinked acrylate copolymer, wherein the crosslinked acrylate copolymer comprises copolymerized monomers comprising at least one monoethylenically unsaturated alkyl (meth)acrylate monomer, at least one monoethylenically unsaturated free-radically copolymerizable reinforcing monomer having a homopolymer glass transition temperature higher than that of the alkyl (meth)acrylate monomer; and

a reinforcing material comprising a metallocene-catalyzed polyolefin within the pressure sensitive adhesive component;

Amendment and Response -- Appendix A

Page A-5

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

wherein the pressure sensitive adhesive fiber comprises about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of the reinforcing material based on a total weight of the pressure sensitive adhesive fiber, and further wherein a nonwoven web comprising the pressure sensitive adhesive fiber and having a basis weight of about 55 g/m² has a maximum load of at least about 30 g/cm, which is at least about 150% of the load at yield point, and an elongation at break of at least about 50%.

20.(AMENDED) A pressure sensitive adhesive fiber comprising:

a pressure sensitive adhesive component; and

an organic polymeric reinforcing material within the pressure sensitive adhesive component, wherein the organic polymeric reinforcing material has a yield strength of no greater than about 20 MPa and an elongation at break of at least about 50%;

wherein the pressure sensitive adhesive fiber comprises about 60 weight percent to about 95 weight percent of the pressure sensitive adhesive component and about 5 weight percent to about 40 weight percent of the organic polymeric reinforcing material based on a total weight of the pressure sensitive adhesive fiber, and further wherein a nonwoven web comprising the pressure sensitive adhesive fiber and having a basis weight of about 55 g/m² has a maximum load of at least about 30 g/cm, which is at least about 150% of the load at yield point, and an elongation at break of at least about 50%.

21. A method for making a minimicrofibrous reinforced adhesive fiber, the method comprising:

forming a molten mixture comprising a pressure sensitive adhesive with a reinforcing material capable of forming minimicrofibers when subjected to a shear force and/or an extensional force;

Amendment and Response -- Appendix A

Page A-6

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

subjecting the molten mixture to a shear force and/or extensional force to form a pressure sensitive adhesive fiber of claim 1; and

quenching the pressure sensitive adhesive fiber.

22. A nonwoven web comprising the pressure sensitive adhesive fiber of claim 1.
23. A nonwoven web comprising the pressure sensitive adhesive fiber of claim 17.
24. A nonwoven web comprising the pressure sensitive adhesive fiber of claim 19.
25. A nonwoven web comprising the pressure sensitive adhesive fiber of claim 20.
26. A substrate comprising at least one surface having a nonwoven web of the pressure sensitive adhesive fiber of claim 1 disposed thereon.
27. The substrate of claim 26 which is a release liner.
28. The substrate of claim 26 which is an extensible nonwoven web comprising fibers having at least two substantially continuous layers throughout the fiber length, wherein the layers comprise at least one first layer of a low modulus material and at least one second layer of a relatively nonelastic higher modulus material capable of undergoing substantial permanent deformation.
29. The substrate of claim 28 wherein the layers are concentric.
30. The substrate of claim 28 wherein the layers are longitudinally layered.

Amendment and Response - - Appendix A

Page A-7

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

31. The substrate of claim 28 wherein each fiber comprises an outer sheath layer comprising the at least one first layer and at least one internal core layer comprising the at least one second layer.
32. The substrate of claim 31 wherein the outer sheath layer comprises a polyurethane.
33. A substrate comprising at least one surface having a nonwoven web of the pressure sensitive adhesive fiber of claim 17 disposed thereon.
34. A substrate comprising at least one surface having a nonwoven web of the pressure sensitive adhesive fiber of claim 19 disposed thereon.
35. A substrate comprising at least one surface having a nonwoven web of the pressure sensitive adhesive fiber of claim 20 disposed thereon.
36. A tape comprising
a backing having a first and second side; and
a nonwoven web comprising the pressure sensitive adhesive fiber of claim 1 disposed on at least a portion of the first side of the backing and, optionally, on at least a portion of the second side of the backing.
37. A tape comprising
a backing having a first and second side; and
a nonwoven web comprising the pressure sensitive adhesive fiber of claim 17 disposed on at least a portion of the first side of the backing and, optionally, on at least a portion of the second side of the backing.

Amendment and Response - - Appendix A

Page A-8

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

38. A tape comprising:
a backing having a first and second side; and
a nonwoven web comprising the pressure sensitive adhesive fiber of claim 19 disposed on at least a portion of the first side of the backing and, optionally, on at least a portion of the second side of the backing.
39. A tape comprising:
a backing having a first and second side; and
a nonwoven web comprising the pressure sensitive adhesive fiber of claim 20 disposed on at least a portion of the first side of the backing and, optionally, on at least a portion of the second side of the backing.
40. A stretch removable article comprising the pressure sensitive adhesive fiber of claim 1.
41. A stretch removable article comprising the pressure sensitive adhesive fiber of claim 17.
42. A stretch removable article comprising the pressure sensitive adhesive fiber of claim 19.
43. A stretch removable article comprising the pressure sensitive adhesive fiber of claim 20.
44. A medical article comprising the pressure sensitive adhesive fiber of claim 1.
45. The medical article of claim 44 which is in the form of a wound dressing, surgical dressing, medical tape, athletic tape, or surgical tape.
46. The medical article of claim 44 which is in the form of a sensor, an electrode, or an ostomy appliance.

Amendment and Response -- Appendix A

Page A-9

Serial No.: 09/847,942

Confirmation No.: 6169

Filed: 2 May 2001

For: PRESSURE SENSITIVE ADHESIVE FIBERS WITH A REINFORCING MATERIAL

47. A medical article comprising the pressure sensitive adhesive fiber of claim 17.
48. A medical article comprising the pressure sensitive adhesive fiber of claim 19.
49. A medical article comprising the pressure sensitive adhesive fiber of claim 20.